

[Handwritten signature]



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,507	02/13/2004	Michael Bucholtz	62357.016809	8911

45599 7590 01/30/2006
GREENBERG TRAURIG LLP
MET LIFE BUILDING
200 PARK AVENUE; 14TH FLOOR
NEW YORK, NY 10166

EXAMINER

SMALLEY, JAMES N

ART UNIT PAPER NUMBER

3727

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/779,507	Applicant(s) BUCHOLTZ, MICHAEL	
	Examiner James N. Smalley	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3727

DETAILED ACTION

Response to Amendment

1. Due to the new grounds of rejection, this action is Non-Final.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 36-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 36 limits the recess to being formed of the third and fourth portions. To the best degree the Examiner understands the claimed invention, the recess is formed of the first and second portions.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 36-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrams US 4,812,116 in view of Towns et al. US 5,368,178.

Abrams '116 teaches a container and cap integrally molded together by a tether which also serves as a hinge, but relies on an annular projection to provide a seal.

Towns '178 teaches a cap for a container, comprising first, second, third, and fourth wall portions, which is capable of providing a watertight seal without an annular projection. It would be obvious to use the projection-less seal

Art Unit: 3727

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Abrams '116, providing the arrangement of Towns '178, motivated by the benefit of forming a watertight seal without the use of an annular projection and saving on material usage.

Regarding claims 40-41 and 43, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the first element of the hinge to about 0.03 inches to about 0.125 inches, and the second element from about 0.1 inches to 0.195 inches, or to any other suitable size, because a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Further regarding claim 43, it would have been obvious to one having ordinary skill to form the recess angle to 15 to 35 degrees relative to the vertical, or to any other optimal value. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claim 44, because the combination meets all claimed structural features, the device will inherently retain the claimed level of water.

6. Claims 36-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Towns et al. US 5,368,178 in view of Abrams US 4,812,116.

Towns '178 teaches a cap for a container, comprising first, second, third, and fourth wall portions, which is capable of providing a watertight seal without an annular projection, but fails to teach the cap being integrally attached to the container.

Abrams '116 teaches it is known to integrally link a container and cap by a hinge/tether element, in order to provide a one-piece container system, and which further prevents the cap from being separated from the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container and closure of Towns '178, providing the hinge/tether taught by Abrams '116, motivated by the benefit of preventing separation of the closure from the container.

Furthermore, Towns '178 does not teach a thumb tab.

Art Unit: 3727

Abrams '116 teaches an unlabeled thumb tab, which can allow a user to open the container using one hand.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Towns '178, providing a thumb tab as taught by Abrams '116, motivated by the benefit of providing means to assist a user in removing the cap from the container.

Regarding claims 40-41 and 43, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the first element of the hinge to about 0.03 inches to about 0.125 inches, and the second element from about 0.1 inches to 0.195 inches, or to any other suitable size, because a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Further regarding claim 43, it would have been obvious to one having ordinary skill to form the recess angle to 15 to 35 degrees relative to the vertical, or to any other optimal value. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claim 44, because the combination meets all claimed structural features, the device will inherently retain the claimed level of water.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER